IN THE

Supreme Court of the United States

October Term, 1959

No. ~~758~~. 48

SYSTEM FEDERATION NO. 91,
RAILWAY EMPLOYES' DEPARTMENT,
AFL-CIO, ET AL.,

Petitioners,

vs.

O. V. WRIGHT, ET AL.,

Respondents.

REPLY OF PETITIONERS TO BRIEFS OF RESPONDENTS

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IN THE

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October Term, 1959

No. 756.

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RAILWAY EMPLOYES' DEPARTMENT,
AFL-CIO, ET AL.,

Petitioners.

vs.

O. V. WRIGHT, ET AL.,

Respondents.

REPLY OF PETITIONERS TO BRIEFS OF RESPONDENTS

The briefs of the Respondents are so artfully misleading as to the issues and ultimate facts presented in the case that we must attempt very briefly to put those matters back into perspective.

The injunctive order of the District Court below, as interpreted by the courts below, restrains the labor union Petitioners from getting, or even attempting to get, the limited amount of union security now permitted under Section 2, Eleventh of the Railway Labor Act, 64 Stat. 1238, 45 U.S.C. Section 152, Eleventh. At the time this injunctive order was formulated and issued, in 1945, union security in all degrees or amounts was prohibited in the railroad industry, and, thus, the prohibition of discrimination against the non-union employee Respondents on account of their failure or refusal to join one of the labor union Peti-

tioners was merely declaratory of the law as it then existed.

While we think that the injunctive order itself could, should, and was intended to have been read so as to forbid job discrimination based on non-union status in all present and future agreements, for so long as the same was proscribed under the Railway Labor Act, the courts below construed the 1945 order differently. They viewed it as also forbidding such discrimination in future collective bargaining agreements nothwithstanding any future (and unforeseeable) changes in the law. Moreover, the courts below further held that even though a drastic change in the substantive federal law, partially permitting what was previously wholly forbidden, was subsequently enacted that that still was not a sufficient ground or justification for allowing the Petitioners to obtain a modification of the order which would have conformed it to the amendment in the law. The result of the litigation, therefore, was a denial of the motion for modification, which was absolutely unreasonable and highly prejudicial to the Petitioners, and which thwarted and subverted an important right specifically conferred upon them by Section 2, Eleventh, of the Railway Labor Act.

I. The Denial of Petitioners' Motion for Modification of the 1945 Order Brings About Considerable Wrong and Hardship In That It Denies Petitioners Substantial Potential Financial Benefits.

The fact that grievous wrong and extreme hardship to Petitioners will be brought about by denial of their requested modification of the 1945 injunctive order seems quite self evident; but judging from the Respondents' briefs, they do not comprehend that this is so.

Petitioners are deprived of the opportunity to obtain substantial revenues or financial benefits from the non-

union employee Respondents. As this court said in *Railway Employes' Dept., AFL v. Hanson*, 351 U.S. 225, 231, in tracing some of the legislative history of Section 2. Eleventh:

> ". . . . While non-union members got the benefits of the collective bargaining of the unions, they bore 'no share of the cost of obtaining such benefits.' Id., at 4. As Senator Hill, who managed the bill on the floor of the Senate, said, 'The question in this instance is whether those who enjoy the fruits and the benefits of the unions should make a fair contribution to the support of the unions.' 96 Cong. Rec., Pt. 12, p. 16279."

The continuation in effect of the 1945 injunctive order deprives the Petitioners of the right to seek an agreement with Respondent Louisville and Nashville Railroad Company that would require the non-union employees to make a "fair contribution" to their support. Inasmuch as the Petitioners, as statutory bargaining representatives for the various crafts or classes of employees, must expend their time and money to protect the interests of those employees as well as their own members, this constitutes a very substantial hardship and wrong. Any attempt at the trial below to corroborate the above kind of hardship or to show additional hardship that might be incurred by individual members or officers of the Petitioners would have been superfluous.

II. The 1945 Injunctive Order Frustrates the Congressional Objective Behind Section 2, Eleventh.

An important feature of this case is the considerable amount of public, as well as private, interest that is involved, although from reading the briefs of the Respondents one would certainly not be aware of it.

This court noted in *Railway Employes' Dept., AFL v.*

Hanson, 351 U.S. 225, 233-234, that the railroad union-shop legislation of Congress was entered into for the purpose of avoiding interruptions to commerce. The court said:

> "Congress has authority to adopt all appropriate measures to 'facilitate the amicable settlement of disputes which threaten the service of the necessary agencies of interstate transportation.' Texas & N. O. R. Co. v. Brotherhood of R. & S. S. Clerks, 281 US 548, 570, 74 L. ed. 1034, 1046, 50 S. Ct. 427. These measures include provisions that will encourage the settlement of disputes 'by inducing collective bargaining with the true representative of the employees and by preventing such bargaining with any who do not represent them.' (Virginian R. Co. v. System Federation, R.E.D. 300 US 15, 548, 81 L. ed. 789, 800, 57 S. Ct. 592), and that will protect the employees against discrimination or coercion which would interfere with the free exercise of their right to self-organization and representation. NLRB v. Jones & L. Steel Corp. 301 US 1, 33, 81 L. ed. 893, 909, 57 S. Ct. 615, 108 ALR 1352. Industrial peace along the arteries of commerce is a legitimate objective; and Congress has great latitude in choosing the methods by which it is to be obtained.
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> "The choice by the Congress of the union shop as a stabilizing force seems to us to be an allowable one.
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> "The task of the judiciary ends once it appears that the legislative measure adopted is relevant or appropriate to the constitutional power which Congress exercises. The ingredients of industrial peace and stabilized labor-management relations are numerous and complex. They may well vary from age to age and from industry to industry. What would be needful one decade might be anathema the next. The decision rests with the policy makers, not with the judiciary."

The Congress felt that such union-shop agreements were not only equitable for the labor unions affected, but also desirable and beneficial for the railroad industry. Accordingly, in order to encourage their negotiation and util-

ization, Congress exercised its preemptive power to the fullest extent in enacting Section 2, Eleventh. State statutes and laws forbidding railroad union-shop agreements were superceded by Section 2, Eleventh, as well as federal statutes and laws; whereas, by contrast, in the Taft-Hartley Act, 61 Stat. 151, 29 U.S.C. Section 164 (b) state statutes or laws were allowed to prevail. See *Railway Employes' Dept., AFL v. Hanson*, supra at 232.

We believe the matter cannot be put more strongly than in the words of Mr. Justice Douglas when in *Railway Employes' Dept. AFL v. Hanson*, supra at 232, he wrote:

> "A union agreement made pursuant to the Railway Labor Act has, therefore, the *imprimatur* of the federal law upon it and, by force of the Supremacy Clause of Article VI of the Constitution, could not be made illegal or vitiated by any provision of the laws of a state." (Emphasis supplied.)

The District Court below by refusing to modify the prior order in practical effect has in 1958 specifically enjoined the Petitioners from utilizing a federal statute that was expressly designed by Congress for use by them and certain other railroad labor unions, and has ordered them to refrain from negotiating agreements which by virtue of the said statute would bear a federal government imprimatur. This plainly amounts to judicial interference with and frustration of federal legislation.

III. There Is No Private Agreement Which Bears on the Right of Petitioners to Seek Union Shop Agreements.

As pointed out in our initial brief herein at pages 15 to 17 there is no private agreement between Respondents and Petitioners preventing the latter from exercising their statutory rights to attempt to obtain union-shop contracts from the Louisville and Nashville Railroad Company. The unilateral release executed by Respondents other than the Louisville and Nashville Railroad Company is certainly not

a contract between Petitioners and the Louisville and Nashville Railroad Company or between Petitioners and the other Respondents, although this seems to be implied by the other Respondents at page 13 of their brief. This is the only manifestation of any purported agreement that has been suggested or "discovered" by either of the Respondents.

If the consent decree itself is felt to be also a private agreement, we submit that the case of *United States v. Swift & Co.*, 286 U.S. 106, and the discussion at page 17 of our initial brief show that the consent by a party to a decree does not constitute an agreement by that party not to seek modification of the decree at some later date.

IV. The Negotiation of a Union-Shop Agreement Could Not Subject the Employee Respondents to Indignities and Harrassment.

Section 2, Eleventh, is a most carefully drawn piece of legislation. A union-shop agreement in conformity with Section 2, Eleventh, which is the only kind that Petitioners could validly negotiate with the Louisville and Nashville Railroad Company, cannot require any employee as a condition of his railroad employment to do more than apply for union membership and tender the initiation fee and the periodic dues and assessments required of all other members.

If, after applying therefor, an employee should be denied membership in the appropriate union for any reason other than failure to tender the dues, initiation fee, or assessments, or should he be suspended or expelled from membership for some reason other than that, he would be legally entitled to continue in his railroad employment as a nonmember and to enjoy the same rights and benefits under the applicable collective bargaining agreement as union member employees in the same classifications.

Thus, it simply is not true that a union-shop agreement can harrass or harm the employee Respondents in the sense of being able to require them to submit to indignities or horrendous disciplinary measures. The only loss they would suffer, if such an agreement should be negotiated, would be financial, in that, by being required to join the appropriate union (if such unions would admit them to membership), they would be required to bear their fair share of the cost of collective bargaining. This is precisely what Congress feels they should do; and this incidentally would probably do more to ameliorate the alleged hostility between the union and non-union groups of employees than any other step that could be taken. This beneficial result was no doubt foreseen by Congress when, in its wisdom, it enacted Section 2, Eleventh.

On the other hand, the 1945 order of the court below which tends to perpetuate the union and non-union division of employees, can lead only to endless bitterness and hostility between employees in the opposing groups.

CONCLUSION

For the reasons stated above, as well as those contained in our initial brief, we urge the court to grant the petition for a writ of certiorari.

Respectfully submitted,

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PROOF OF SERVICE

I, Richard R. Lyman, one of the attorneys for Petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 9th day of April, 1960, I served copies of the foregoing Reply of Petitioners to Briefs of Respondents on the several parties thereto as follows:

1. On Respondent Louisville and Nashville Railroad Company by mailing copies in duly addressed envelopes, with air mail postage prepaid, to its attorneys of record, as follows:

John P. Sandidge,
Woodward, Hobson & Fulton
1805 Kentucky Home Life Building
Louisville, Kentucky.

H. G. Breetz,
Louisville and Nashville Office Building
Ninth & Broadway
Louisville, Kentucky.

2. On Respondents other than Louisville and Nashville Railroad Company by mailing a copy in a duly addressed envelope, with air mail postage prepaid, to their attorney of record, as follows:

Marshall P. Eldred,
Brown & Eldred,
Board of Trade Building,
Louisville 2, Kentucky.

Richard R. Lyman